

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
D.P. MARSHALL JR., JUDGE

DIVISION III

CACR06-811

7 March 2007

L. C. CLEMONS,
 APPELLANT
v.

AN APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[CR05-250-1]

STATE OF ARKANSAS,
 APPELLEE

HONORABLE HAMILTON HOBBS
SINGLETON, JUDGE

AFFIRMED

A jury convicted L.C. Clemons of breaking or entering and theft of property worth less than \$500.00 for taking the CD player from Lonnie Nelson's car. Clemons was sentenced as a habitual offender to fifteen years in prison and one year in county jail. He appeals, challenging the sufficiency of the evidence supporting his convictions.

To convict Clemons, the State had to prove that he entered or broke into Nelson's car for the purpose of committing theft, and that he knowingly took Nelson's CD player with the purpose of depriving him of it. Ark. Code Ann. § 5-39-202(a)(1) (Repl. 2006) and Ark. Code Ann. § 5-36-103(a)(1) (Repl. 2006). The State

presented only circumstantial evidence to prove Clemons's guilt—there was no direct evidence that Clemons possessed the CD player or that he ever entered Nelson's car. Thus the proof had to rule out every reasonable hypothesis other than Clemons's guilt. *Baughman v. State*, 353 Ark. 1, 6, 110 S.W.3d 740, 743 (2003). Viewing the evidence that supports the verdict in the light most favorable to the State, we hold that substantial evidence supports Clemons's convictions.

Nelson testified that he came home and parked his car in the driveway, leaving it unlocked with the windows down. His CD player was installed in the car. He went inside for about five minutes to make a phone call. When he came back outside, there was a man about "three or four steps" from his car. No one else was in the yard or near his car. The man looked at Nelson several times and ran away when Nelson questioned him. Nelson could not see the man's hands because they were under his coat. The man's posture, Nelson testified, indicated he had something "up under the jacket or coat" Nelson later identified Clemons in a photo array presented by the police.

Though all the evidence in this case is circumstantial, it supports the jury's verdict and rules out every reasonable hypothesis of Clemons's innocence. Nelson saw Clemons in his yard within a few minutes of the time his CD player was stolen, and Clemons appeared to be concealing something under his jacket. There was no

one else around. Clemons's failure to answer Nelson's questions and flight are evidence of guilt. *McKenzie v. State*, 362 Ark. 257, 267, 208 S.W.3d 173, 178 (2005) (improbable explanation of suspicious circumstances); *Hanlin v. State*, 356 Ark. 516, 526, 157 S.W.3d 181, 187 (2004) (flight). Nelson's testimony was undisputed. The circuit court therefore correctly denied Clemons's motion for a directed verdict. And we affirm his convictions because substantial evidence supports them.

GLOVER and BAKER, JJ., agree.